

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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STANLEY E. MARTIN, JR.,

Plaintiff,

OPINION AND ORDER

v.

09-cv-584-bbc

BYRAN BARTOW, Director, Wisconsin  
Resource Center (WRC), in his individual and  
in his official capacity,

Defendant.  
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On October 27, 2009, I entered an order denying plaintiff Stanley Martin, Jr. leave to proceed in forma pauperis on a claim that defendant Byran Bartow violated his procedural due process rights in conjunction with a behavior disposition record hearing and dismissed his complaint for failure to state a claim upon which relief may be granted. Dkt. #9. Plaintiff filed two motions for reconsideration of that order. I denied those motions on November 19, 2009. Dkt. #13. Now before the court is plaintiff's third motion for reconsideration and alternative request for a certificate of appealability. Dkt. #14.

Because the arguments that plaintiff raises in support of his motion for reconsideration are ones that I previously considered and rejected, the motion will be denied.

Neal v. Newspaper Holdings, Inc., 349 F.3d 363, 368 (7th Cir. 2003) (not abuse of discretion to deny motion to reconsider where plaintiffs simply took opportunity to reargue merits of case). I will also deny plaintiff's request for a certificate of appealability because this requirement applies only to prisoners wishing to appeal the denial of a petition for a writ of habeas corpus. Rule 11 of the Rules Governing Section 2254 Cases; see also 28 U.S.C. § 1915A (procedures to be followed in civil lawsuits filed by prisoners). However, I will construe plaintiff's request as a notice of appeal. Because he has not paid the \$455 fee for filing a notice of appeal, I construe the notice as including a request for leave to proceed in forma pauperis on appeal. Plaintiff's request will be denied because I am certifying that his appeal is not taken in good faith.

In Lucien v. Roegner, 682 F.2d 625, 626 (7th Cir. 1982), the court of appeals instructed district courts to find bad faith where a plaintiff is appealing the same claims the court found to be without legal merit in denying plaintiff leave to proceed on his complaint. Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000). Plaintiff is trying to appeal the same claim that I have found failed to state a claim for relief under federal law. Because there is no legally meritorious basis for plaintiff's appeal, I must certify that the appeal is not taken in good faith.

Because I am certifying plaintiff's appeal as not having been taken in good faith, plaintiff cannot proceed with his appeal without prepaying the \$455 filing fee unless the

court of appeals gives him permission to do so. Under Fed. R. App. P. 24, plaintiff has 30 days from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. His motion must be accompanied by an affidavit as described in the first paragraph of Fed. R. App. P. 24(a), including a statement of issues that plaintiff intends to present on appeal. Also, plaintiff's motion must be accompanied by a copy of this order.

Plaintiff should be aware that these documents should be filed in addition to the notice of appeal he has previously filed. If plaintiff does not file a motion requesting review of this order, the court of appeals may not address this court's denial of leave to proceed in forma pauperis on appeal. Instead, it will require plaintiff to pay the entire \$455 filing fee before it considers his appeal. If plaintiff fails to pay the fee within the deadline set, it is possible that the court of appeals will dismiss the appeal and order this court to arrange for collection of the fee from plaintiff's prison account.

### ORDER

IT IS ORDERED that

1. Plaintiff Stanley Martin's third motion for reconsideration of the October 27, 2009 order and alternative request for a certificate of appealability, dkt. #14, is DENIED.
2. Plaintiff's request for leave to proceed in forma pauperis on appeal, dkt. #14, is

DENIED. I certify that plaintiff's appeal is not taken in good faith.

3. The clerk of court is directed to insure that plaintiff's obligation to pay the \$455 fee for filing his appeal is reflected in the court's financial record.

Entered this 3<sup>rd</sup> day of December, 2009.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge